

**Town of Amherst**  
**Zoning Board of Appeals**

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00017, to the Amherst Brewing Company, Inc., for the operation of a Class II restaurant, under Section 3.352.1 of the Zoning Bylaw, with accessory retail, distribution and brewery under Section 5.00, accessory outdoor dining under Section 5.041 and live music under Section 5.042, at 6-10 University Drive (Map 13B, Parcel 20, B-L Zoning District) with the following conditions:

1. The interior of the restaurant shall be configured substantially in accordance with the following floor plans prepared by Architectural Insights:
  - a. Color rendered floor plans (undated) showing alternate seating arrangement for music;
  - b. Floor plan, dated 12/22/2010 bearing a "received" stamp on 2/10/11, showing the mezzanine space and square footage calculations.
2. Any substantial changes to the approved floor plans shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
3. All aspects of the restaurant, including all accessory uses, shall be operated in accordance with the Management Plan, dated March 1, 2011, and stamped approved by the Zoning Board of Appeals on March 16, 2011. Any substantial changes to the Management Plan shall be reviewed and approved by the Zoning Board of Appeals at a public meeting.
4. The total occupancy of the space shall be no greater than 450 people. The total occupancy shall include all employees and patrons. Patrons shall include those seated indoors, within the outdoor dining area, and those inside the establishment waiting to be seated.
5. The hours of operation shall be 11:00 a.m. to 1:00 a.m., Monday through Friday and 10:00 a.m. to 1:00 a.m., Saturday and Sunday. All patrons must be out of the building by 1:00 a.m.
6. The outdoor dining shall be:
  - a. Limited to maximum of 28 patrons;
  - b. Constructed in accordance with the approved Floor Plans and the Exterior Elevations, dated January 24, 2011;
  - c. Operated in accordance with all applicable requirements of Section 5.041 of the Zoning Bylaw, except that tables and chairs may remain in the area between November 1 and April 1;
  - d. Serviced by non-disposable glasses, china and/or other tableware;
  - e. Limited to a volume of music that does not impede normal conversation for patrons.
7. Retail sales shall be incidental to the restaurant use and shall be conducted in accordance with the approved Management Plan, dated March 1, 2011 and stamped approved on March 16, 2011.

8. Live music shall be:
  - a. Incidental to the restaurant use;
  - b. Operated in accordance with the approved Management Plan;
  - c. Performed only in the designated area as shown on the approved floor plans;
  - d. Sound produced by live entertainment shall not generally exceed 70 dB (A) as measured at any boundary of the property on which the establishment is located, pursuant to Section 5.0421 of the Zoning Bylaw.
9. Distribution of products off-site shall be incidental to the restaurant. Any vehicles associated with the distribution shall operate Monday through Friday - during normal business hours- but no later than 6:00 p.m.
10. On-site managers and/or other employees shall be responsible for managing and/or monitoring any patrons gathered outside of the building. Patrons waiting to enter shall use the interior "waiting area" to the maximum extent possible.
11. Any glass, metal or plastic recyclables shall not be emptied onto the loading dock after 9:00 p.m. to prevent unnecessary noise.
12. No employees shall be parked behind the east side of the building after 9:00 p.m. All employees shall enter and exit the building via the exterior doorway leading to the second floor (along the northwest side). All employees leaving the premises shall not travel behind the east side of the building during evening hours. All staff leaving the premises after closing shall leave quietly, as per the Management Plan.
13. The kitchen ventilation system shall be based on the velocity stack system, depicted in the plan by Allstate Hood and Duct, stamped approved by the Zoning Board of Appeals on March 16, 2011. Any changes to the ventilation system shall be designed to be at least as effective for purposes of dispersing odor.
14. Any lighting, new or altered, on the premises shall either be downcast or designed and installed to prevent light spillage onto adjacent properties.
15. Other than the existing Amherst Brewing Company sign (labeled sign #1 on the Exterior Elevations, stamped approved by the Zoning Board of Appeals on March 16, 2011), any additional signs on the building shall be submitted to the Zoning Board of Appeals at a public meeting for review and approval.
16. Food shall be available at all times when alcohol is available. All employees who serve alcohol, including the restaurant manager, shall be appropriately trained and certified in responsible methods of alcohol service (e.g. TIPS, Bar Code or ServSafe).
17. Growlers may not be consumed on the premises.
18. Upon a change of ownership, the new owner shall present a Management Plan - and any changes to the premises - to the Zoning Board of Appeals at public meeting. The purpose of the public meeting shall be for the Zoning Board of Appeals to determine whether any changes are substantial enough to require a new Special Permit.

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Hilda Greenbaum, Acting Chair  
Amherst Zoning Board of Appeals

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DATE

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Amherst Brewing Company  
24 North Pleasant Street, Amherst, MA 01002

**Property owner:** Woodgreen Amherst, LP  
6515 Main Street, Suite 12, Trumbull, CT 06611

**Date application filed with the Town Clerk:** January 6, 2011

**Nature of request:** To establish a Class II restaurant/bar with outdoor dining, and accessory sales and distribution, under Section 3.352.1 and 5.041 of the Zoning Bylaw. [Based upon the Zoning Bylaw, amended through November 2010]

**Address:** 6 University Drive (Map 13B, Parcel 20, B-L Zoning District)

**Legal notice:** Published on January 26, 2011 and February 2, 2011 in the Daily Hampshire Gazette and sent to abutters on January 24, 2011

**Board members:** Hilda Greenbaum, Eric Beal, Tom Ehrgood

**Staff members:** Jeff Bagg, Senior Planner and Bonita Weeks, Building Commissioner

**Submissions:**

- ZBA application, filed 1/1/11;
  - Project Summary and Management Plan, dated 1/18/11;
  - Applicant letter and 10.38 findings, dated 1/5/11;
  - Color rendered floor plans, elevation and seating capacity chart, prepared by Architectural Insights, received 2/4/11;
  - Floor Plans, prepared by Architectural Insights, dated 12/22/10;
  - Exterior elevation, prepared by Architectural Insights, dated 1/24/11;
  - Survey, prepared by Hill Engineers, dated 12/26/95;
  - Signed Petition, 2/4/11, support;
  - Signed Petition, 2/7/11, support;
  - Signed Petition, 2/9/11, support;
  - Photographs of existing facilities, 2/9/11;
  - “Late Night and “Regular” and menu, 2/9/11;
  - Updated Floor Plans, prepared by Architectural Insights, received 2/10/11;
  - Parking Analysis For Newmarket Center, received 2/10/11.
  - Letter from Alan Seewald, dated 3/4/2011;
  - Revised Project Summary and Management Plan, dated 3/1/2011;
  - Letter from Allstate Hood and Duct, dated 3/3/2011;
  - Preliminary Acoustical Analysis and Report, dated 3/3/2011;
  - Email from Alan Seewald, additional acoustical information, 3/10/11;
  - Letter and specifications from Allstate Hood and Duct, dated 3/10/11.
- Submitted by Town Staff:
- Project Application Report, revised 2/10/11;
  - Town GIS zoning map, dated 1/5/11;

- ZBAFY2002-00020 Decision (denial), submitted floor plan and Management Plan;
- ZBA FY2009-00011, approved floor plans and Management Plan;
- Fire Department Review letter, 2/22/11;

- Planning Director email, 3/9/11;
- Health Department Review letter, 3/9/11;
- Disability Access Advisory Committee memo, 03/10/11

The following information was submitted by the public:

1. Douglas Raybeck, letter to editor, 2/14/11;
2. Yeshi and Dolkar Gyaltsen, 23 Charles Lane, 3/10/11, opposed;
3. Lauren Vieland, 19 Charles Lane, 3/9/11, opposed;
4. Thomas O'Brien, 18 Amity Place, 3/7/11, support;
5. William Meeks, 6 Amity Place, 3/4/11, support;
6. Tim and Cathy Neale, 63 Amity Place, 2/23/11, support;
7. Barbara King-Shaver, 69 Amity Place, 2/23/11, support;
8. Ronald Tiersky, 14 Amity Place, 2/23/11, support;
9. P.K. Backholm, Forbes Snyder Tri-State Cash Register, 2/16/11, support;
10. Ann Collette and Michael Diamond, 7 Charles Ln, 2/10/11, opposed
11. Rebecca Caplice, Greenfield Savings Bank, 2/10/11, support;
12. Dolkar and Yeshi Gyaltsen, 23 Charles Ln, 2/9/11, opposed
13. Justine Holdsworth, 256 Sabin St, Belchertown, MA, 2/9/11, support;
14. Lesley Crouse, 21 Amity Place, 2/9/11, support
15. William O'Neil, 351 Pleasant St, Northampton, MA, 2/8/11, support;
16. Janice Brickley, 54 Amity Place, 2/8/11, opposed;
17. Lisa and Andrew Bishop, 10B Duncan Drive, South Deerfield, MA, support;
18. Robert and Phyllis Pearl, 53 Amity Place, opposed;
19. Aaron Lorenz, Mahwah, NJ, 2/7/11, support;
20. Andrew Donoghue, 115 Pelham Rd, 2/4/11, support;
21. John Conlon, 58 Harlow Dr, 2/3/11, support;
22. Julie Marcus, 8 Ladyslipper Cir, 2/1/11, support;
23. Valerie Faith, 20 Charles Ln, 2/1/11, support;
24. Phillip DiChiara, 80 Carraige House Ln, Wrentham, Ma, 2/1/11, support;
25. Jeff DiCiaccio, 47 Westcott Road, Hopedale, MA, 1/28/11, support;
26. Allen Chase, 40 Lawrence Dr, Longmeadow, MA, 1/28/11, support;
27. Cinda Jones, 134 Montague Rd, 1/27/11, support;
28. Charles Dyson, PO Box 522, Storrs, CT, 1/26/11, support;
29. Eric Vieland, 19 Charles Ln, 1/24/11, opposed;
30. Qian Yu, Amity Place, 1/24/11, opposed;
31. R.R. Faulkner, 43 Amity St, 1/24/11, opposed;
32. Baer Tierkel, 30 Dana Place, 1/24/11, support;
33. Cathy Harraghy, 17 Amity Place, 1/24/11, support;
34. Rebecca Nordstom, 39 Dana Street, 1/19/11, opposed;
35. Ann Holland (Sandberg), 61 Amity St, 1/19/11, opposed;
36. William Toner, Jr., 297 Ardsley Rd, Longmeadow, Ma, support;
37. Elaine Bowditch, 74 Blue Hills Rd, 1/18/11, opposed;
38. James Leheny, 11 Dana St, 1/18/11, opposed;
39. Margaret Smith, 4 Amity St, 1/14/11, opposed.

**Site Visit: February 7, 2011**

Hilda Greenbaum, Eric Beal and Tom Ehrgood met the applicant, John Korpita, architect Larry Tuttle and Attorney, Alan Seewald on-site. The following was observed:

- The location of the property at the corner of University Drive and Amity Street consisting of a large commercial building, existing parking area, and entrances on both University Drive and Amity Street.
- The interior of the commercial space, including the approximate location of interior and exterior seating areas, live music, bar, restrooms, kitchen and brewing area.
- The rear of the building including location of emergency exit, air intake system, trash compactor, vegetative buffer and adjacent residential properties.
- The loading dock and trash storage areas along the south side of the building.
- The location of the proposed outdoor dining at the front of the building.

**Public Hearing: February 10, 2011**

The applicant, John Korpita, President of Amherst Brewing Company, Inc., was accompanied by his attorney Alan Seewald, and architect, Larry Tuttle.

Mr. Seewald spoke regarding the application. His statements are summarized as follows:

- He is a local attorney representing Amherst Brewing Company and was also involved in the approval of the adjacent residential subdivision on Charles Lane.
- The proposal is to establish a Class II restaurant under Section 3.352.1 of the Zoning Bylaw. The proposal includes accessory outside dining on the west side of the building adjacent to the parking lot, accessory retail sales in the premises to customers for off-site consumption, and accessory distribution of beer to off-site package stores and other wholesale customers.
- The Amherst Brewing Company has been operating in its current location at 24 North Pleasant Street for 14 years. During that time it has operated in close proximity to other uses, such as the Jones Library, professional offices and other restaurants, without complaints. During this period, the business has undertaken three (3) expansions.
- The use will be conducted without unduly hindering the other uses in the area and is allowed in the Limited Business District with a Special Permit, not a variance as some have indicated. The purpose of the B-L Zoning District is to provide areas of moderate density office, commercial and multifamily developments along arterial or primary roads, which accurately describes University Drive.
- The letters submitted in opposition to the project state general concerns, and not specific problems that exist at the current location or would exist at the proposed location. The applicant does not want this to become a place for people to get pitchers of cheap beer. The proposal is for a restaurant and bar serving hand-crafted beer with an atmosphere of a brew-pub. This proposed use is different from the previously rejected proposal [by a different party], which was to be a nightclub during later hours.

John Korpita spoke regarding the application. His statements are summarized as follows:

- He is the President and principal manager of Amherst Brewing Company. He was involved in various brew pubs in Brattleboro, Vermont and for a brief time at Northampton Brewery.
- ABC was designed to have a relaxed atmosphere offering an alternative to the other establishments in the vicinity. The upstairs area, added to the current location in 2004, provides an area for pool tables and seats and also hosts special functions such as parties and other gatherings.
- In 2009, the adjacent space became available and ABC expanded the seating and kitchen areas, allowing for the creation of a more formal entrance.

- The University Drive location provides the opportunity to have all the facilities on one floor and it provides easier access and parking for customers. The new location will also allow for an expansion to the brewing capacity to allow for a small distribution component to be created. The distribution will be on a small scale, and will not consist of large box trucks, but rather a small pick-up truck. The purpose of the distribution is to get the product out to other vendors and utilize it as a marketing tool. There are no plans to become a brewery, like Berkshire Brewing Company.
- The intent of the relocation is not to change any of the existing management practices. They will not serve pitchers of beer. ABC has a reputation for being diligent in preventing the use of false ID's and ensuring that all service staff is trained in alcohol awareness programs such as TIPS. The business is part of the Retail Partners Association and is involved in the Campus and Community Coalition to Reduce High-Risk Drinking.
- He explained that ABC is a restaurant. There is no dancing or stacking of chairs during the later hours. The emphasis is on providing a relaxed atmosphere for drinking hand-crafted beer.
- Employees will park at the rear of the building which is screened from the adjacent residential properties by arborvitae as described in the Management Plan. He stated that most of the evening employees will leave the premises between 1:00-1:15 a.m. and they will be trained to leave quietly at the end of their shift.

Architect Larry Tuttle spoke regarding the application. His statements are summarized as follows:

- The proposed location will allow ABC to operate on a single floor, which is a critical improvement to how the day- to-day operations will occur.
- The large parking area at the front will provide easy and convenient access and the walkways provide accessible ramps and sidewalks.
- The delivery of raw materials and other products can be done easily via the loading dock. The floor plan shows how these products can be easily moved to storage areas.
- The kitchen is modeled after the existing kitchen but is larger and will function more efficiently.
- Patrons will enter through the existing doorway at the front into a lobby area which will contain a small retail area consisting of several coolers and a small merchandise area.
- The interior will contain several distinct seating areas, a bar area, a pool room, and restrooms. The large space allows for wider than required aisles throughout.
- One of the seating areas will have an alternate arrangement to allow for live music, beer tastings or other seminars. Approximately six (6) tables will be moved for this arrangement, as shown on the floor plan.
- The restrooms will be at the rear of the building, the number of which exceed the Building Code requirements.
- The brewing operation will occupy a small amount of square footage relative to the entire space. It will consist of a centrally located "brew house" where the brewing begins; the resulting product is then moved to a "bright beer cellar" into fermenting tanks. All of the raw materials will be stored close to the loading dock.
- The kitchen will be updated to serve the additional dining capacity. The exhaust hood will vent from the roof and will be positioned approximately six (6) feet in from the edge of the rear of the building. The ventilation system will be directed westward over the top of the building in order to keep the exhaust from re-entering the facility via the clean air intake and to help mitigate the possibility of odors drifting to the adjacent properties.

- The outdoor dining will be limited to 28 seats and will be within an existing landscaped area. It will be delineated by a fence to prevent patrons from entering or exiting directly from that area and will not extend outward past the existing columns shown on the floor plans. The fence will be made of low-maintenance aluminum. A new door will be installed to access the outdoor dining area from the interior seating area.
- The rear of the building has two doors. The door at the center of the space and in the vicinity of the kitchen will be eliminated. The other door will be considered one of the emergency exits and will be illuminated as per applicable code requirements.
- Waste from the brewing process and the restaurant will be removed via the loading dock area. The waste, including glass and paper recycling, will be stored in plastic barrels and will be emptied daily, except for Friday and Sunday. They will be stored partially below grade and screened from view. He noted that there would be approximately 6-8 containers which will be screened from the adjacent property.
- The main sign will be the same sign used at the current location. The submitted elevation depicts the maximum sign size based on the requirements of the Zoning Bylaw.
- The occupancy of the space is proposed to be 450 people. The actual square footage of the space could allow almost 700 people, but that other requirements such as the number of restrooms, kitchen capacity, and egress door requirements bring the proposed number down to 450 people, including employees. The actual number of seats is 400 patrons and the additional 50 people allows for all employees, including those changing shifts, as well as any patrons who may be waiting for a seat.
- The existing parking area complies with the parking requirements for restaurants under Section 7.002 of the Zoning Bylaw for the restaurant.

Mr. Ehrgood noted that the Board must make certain findings under Section 10.38 of the Zoning Bylaw regarding odor and noise and requested more information regarding the kitchen ventilation system and the music. Mr. Tuttle stated that the exhaust fan will be on the roof and will be a minimum of six (6) feet from the rear of the building to eliminate the requirement to install a railing at the edge of the roof. The vent will direct the exhaust to the west, over the roof of the building to prevent it from being sucked into the clean air intake on the rear wall of the building. Regarding the music, he noted that because the building is constructed with cinder blocks and because the band will be set up at the front of the building, there will be virtually no music heard at the exterior of the rear of the building. He stated that there will only be pre-recorded music played in the outdoor dining area.

Ms. Greenbaum asked about how the number of patrons will be counted and monitored. Mr. Korpita stated that an employee will be either a “door guy” or hostess positioned at the front entrance every day. On busier weekends there will be more people responsible for monitoring the patron behavior and building occupancy.

Ms. Greenbaum asked about the brewing process and whether fermentation will produce offensive odors. Mr. Korpita stated that the odors from the brewing process are negligible. He explained that during the brewing process there may be 3-4 hour periods where the exhaust odors would smell similar to oatmeal and noted that the largest by-product is steam. The steam from the brew house will be exhausted from a vent at the loading dock.

Mr. Korpita stated that they have been brewing in the downtown location for 13 years and have never had a complaint from any of the surrounding tenants, which include an attorney’s office in the same building or the Jones Library immediately adjacent to the building.

Mr. Beal asked about managing crowds, especially later at night or those arriving in big groups, such as during a “bar crawl.” Mr. Korpita stated that they do not tolerate rowdy or disruptive behavior and would ask unruly patrons to leave. He added that they do not allow in people who are part of a “bar crawl” and will turn them away because it makes fewer problems for their business.

Ms. Greenbaum asked if three (3) bars in the area could reach “critical mass”. Mr. Korpita said it will not become an issue because they have different clientele and we are more of a family restaurant and up-scale lounge. He added that all servers receive alcohol service training and are diligent about enforcing ID regulations.

Mr. Seewald discussed the parking area and the requirements of the Amherst Zoning Bylaw. His statements are summarized as follows:

- The parking area, as shown on the submitted site plan, was created in 1985 and was designed to support the needs of a supermarket. He stated that there will be no changes to the parking area, access ways or any other aspect of the existing site plan. He stated that the arrangement of the plaza, its traffic flow and sidewalks allow for easy and safe vehicle and pedestrian movements.
- He read Section 7.20 of the Zoning Bylaw which authorizes the Zoning Board of Appeals to consider requests for shared parking. He referred to the submission of a “Parking Analysis For Newmarket Center” which identifies the existing and required parking spaces relative to the 120% required for shared parking under Section 7.20 of the Zoning Bylaw. The spreadsheet shows that the required number of parking spaces for the restaurant is met as well as the parking requirements for the other uses on the property. He stated that the site is two (2) parking spaces short of the 120% threshold at which number approval from the Zoning Board would not be required. He said that the proposal is at 119% of the parking needed for shared parking to occur “by-right”. Therefore, the Board must make a finding that the parking spaces to be shared represent the difference between peak parking needs generated by on-site uses occurring at different times pursuant to Section 7.2000.
- The parking demand will be reduced due to the site being on a bus route and on the bike path. He noted that there is at least one (1) bike rack onsite.

Mr. Ehrgood asked what other businesses are open at night. Mr. Seewald responded that the laundromat is open late and the dental office has hours until 7:00 p.m. one night per week.

Ms. Greenbaum asked about the parking needs during the day. Mr. Seewald responded that ABC would need some parking during lunch, but that the peak needs are later in the evening.

Mr. Beal asked during which hours is the restaurant at its peak use and what the parking needs are prior to those peak hours. Mr. Korpita stated the following:

- The peak parking needs for the restaurant would likely occur from 6:00 p.m. to 10:00 p.m. daily, and that it is probably  $\frac{1}{4}$  to  $\frac{1}{2}$  as busy during the hours prior to 6:00 p.m. He noted that the peak is different from that of the laundry mat and the other uses onsite.

Mr. Seewald reviewed the Management Plan. The following is a summary of items which were discussed, but not addressed in the Management Plan:

- In the time that the restaurant was downtown, there were no issues with patrons gathering outside. Additionally, the new location provides an interior waiting area for patrons.
- Deliveries to the site will occur at the loading dock used by the former grocery store to receive deliveries via large tractor trailer trucks.



Mr. Ehrgood identified that according to the Management Plan employee parking would be behind the building. He expressed concern regarding the noise that will be created from employees leaving from the parking area behind the building during the later hours. He suggested that one way to mitigate the impact could be to include a condition on the permit that employees to not park behind the building after a certain hour. Mr. Korpita responded that employees could be required to exit from the middle of the building and to not park behind the building. Mr. Seewald stated that there will be ample parking on the property at night and that the applicant would be agreeable to a condition which prohibited employees from parking at the rear of the building during evening hours.

Ms. Greenbaum asked about the lighting at the rear of the building. Mr. Seewald stated that there is an emergency light over the exit door.

Mr. Ehrgood identified that the proposal includes two (2) accessory uses, including retail sales and distribution. He noted that under the requirements of Section 5.00 of the Zoning Bylaw, the Board can authorize accessory uses if they are “customarily accessory and incidental to a permitted Principal Use”. He asked whether distribution is customarily incidental to the restaurant use.

Mr. Seewald stated the following:

- The retail sales and distribution are customarily incidental to the use as a brewpub. He stated that beer is a product produced for distribution and consumption off-site just like spaghetti sauce. He added that ingredients are combined to produce a product just as a restaurant does and then provides those consumable products prepared on premises for consumption off premises. In this case the product is beer.
- Mr. Korpita stated that small scale distribution is customary for other brewpubs in the area. He noted that Northampton Brewery had distributed its beer, but stopped doing so because of complaints about the product. He added that Opa Opa in Southampton also distributed on a small scale prior to opening a larger brewing facility in Williamsburg. He stated that because the product is bottled by hand, only about 5%, or less, of the sales would be attributed to distribution for off-site consumption, as noted in the Management Plan. He stated that the distribution component is considered a marketing tool and the primary focus of the business is the restaurant. If the distribution were to be any larger, ABC would need to find another location and would become a brewery, not a brewpub.
- A brewpub is considered a restaurant that brews its own beer.

The following members of the public spoke regarding the application. All statements are summarized:

1. Ann Collette, 7 Charles Lane: Opposes the project based on concerns of the proximity of the use to their property and the nuisances that may be caused by noise and odor.
2. Lauren Vieland, 19 Charles Lane: Opposes the project based on concerns that the change in use could result in noise and other disturbances at the loading dock and possible increase in people loitering behind the building.
3. Stephanie O’Keefe, 73 Butterfield Terrace: Supports the project based on the involvement of Mr. Korpita in the Campus Community Coalition To Reduce High Risk Drinking and acknowledged that this participation is a testament to their commitment to responsible service of alcohol.
4. Tony Maroulis, Pelham: Supports the project based on ABC’s commitment to Amherst and its business community and acknowledged ABC’s dedication to the goals of the Campus Community Coalition.

5. Dolkar Gyaltsen, 23 Charles Lane: Opposes the project based on concerns of safety due to increased people behind the building and possibility for increased criminal activity and the impact of cooking odors.
6. Edward Malanchouski: Supports the project based on increasing the options for food establishments along University Drive and noted that the use is less of an impact related to noise than the former use as a gym.
7. Dave Sporny, 200 Heatherstone Road: Supports the project based on direct involvement in the Amherst Jazz Orchestra and noted that the noise impact from their music has not been an issue at the current location and noted that the ease of parking at this site will be beneficial.
8. Robert Neilson: Supports the project based on his position as Assistant General Manager at ABC and noted staff procedures, such as a smoking policy and TIPS certification that are in place to encourage proper staff behavior.

Mr. Seewald responded to the public comments. His statements are summarized as follows:

- He does not want to denigrate any of the neighbors' concerns, but noted that they are mostly general in nature and are not directly connected to this proposal.
- He suggested that adding a light at the rear of the building could help prevent the temptation for anyone to linger behind the building.
- The outdoor dining will not create noise issues for the residential properties at to the east. He noted that the outdoor dining area is at the west side of the building and is tucked under the roof overhang. The noise will not be a nuisance to those properties which are over 100 feet away and separated by the entire length of the building.

Ms. Greenbaum asked whether there are any Health Department, or other regulations, regarding odor emissions. Mr. Seewald responded that there are no such regulations. He noted that the current location is next to offices and the Jones Library, which are closer than the residences at the proposed location. He stated that there have been no odor complaints from the business at the current location. Mr. Ehrgood recommended that additional information be provided for the next hearing about the ventilation system and odor control.

Mr. Ehrgood asked about the level and type of noise, or sound from the live music, which might be heard at the back of the building and asked about the music on the outdoor dining patio. Mr. Korpita stated that the outdoor dining area will be controlled separately and will not produce loud music, it will be background music.

Mr. Ehrgood asked about the noise created from the air intake vent at the rear of the building. Mr. Tuttle responded that there is an air handler on the back wall of the building which takes fresh air into the building. The air handler will remain and there will likely be additional make-up air vents at the rear of the building but that the noise will not increase significantly.

Mr. Beal asked whether there are any problems with criminal behavior at the current location. Mr. Korpita stated that they have called the police on very few occasions usually involving patrons who were asked to leave but do not leave on their own accord.

Mr. Ehrgood requested additional information related to noise leakage from inside the premises through the east wall of the building. Mr. Bagg recommended the applicant revise the Management Plan to include any new information, such as employee parking, training and smoking policy.

Mr. Beal MOVED to continue the evidentiary portion of the public hearing to March 10, 2011. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to continue the public hearing to March 10, 2011.

**Public Hearing: March 10, 2011** (continued from February 10, 2011)

Ms. Greenbaum identified the new information provided since the last hearing.

Mr. Seewald discussed noise. His statements are summarized as follows:

- The Zoning Bylaw does not set a standard that a use will not have “any” noise or odor, but rather, the Sections of 10.38 that deal with these issues are qualified or limited by the phrases such as “nuisance” or “substantial inconvenience.”
- The location of outdoor dining is essentially in a cave and at such a distance that noise will not be heard at the adjacent residential properties.
- A provision in the Zoning Bylaw, Section 5.0421, states that the sound of live music shall not exceed 70dB (A) at any property line.
- A report, and a subsequent email, was provided by Sound Stream Media. It states that the background ambient noise at both the front and rear of the building is around 55 dB (A), peaking at 60-62 dB (A) above the threshold of hearing. The property is at the busy intersection of University Drive and Amity Street where the ambient noise includes people talking, existing mechanical systems, cars, and other noises in the environment.
- The Zoning Bylaw doesn’t specify the requirement, except to determine that the noise from live music does not exceed 70dB (A) at any property line. The acoustical analysis concluded that a bass-drum inside the building was barely audible on the east side of the premises.
- The music is not played while the adjacent businesses are open and noted that if new uses occupy the adjacent space after this use is established, they would have to adapt.
- The Management Plan describes the times that music will be played.

Ms. Greenbaum expressed concern related to noise. Her statements are summarized as follows:

- The measure of decibels is a ratio on a logarithmic scale relative to some zero level.
- The Zoning Bylaw likely did not consider a situation where a building is 50 feet from the property line. She stated that 70 dB (A) at the property line – which is 50 feet from the building could be too loud for businesses abutting the premises. She asked whether the music should be limited to 70 dB (A) at the exterior of the building rather than at the property line to reduce the impact from noise on adjacent businesses.
- The Board has to consider that the permit will go with the property and noted that the type of music being played could change. She noted that the condition needs to address that potential change and protect the adjacent businesses in the future.
- Similar uses downtown have a condition limiting the music level to “no louder than the ambient level outside premises.”

Mr. Seewald stated that there is a very specific standard in the Zoning Bylaw and noted that none of the adjacent businesses are expressing concern about the noise levels. He added that the standards in the Zoning Bylaw are intended to protect the adjacent residential property owners within 150 of the establishment not the adjacent commercial spaces.

Mr. Beal stated that Section 5.0422 seems to give the Board some discretion, such as requiring a probation period. He suggested that the evidence seems to show that noise will not be an issue and that the proposal seems acceptable.

Mr. Beal added that if there are complaints or issues in the future that some measurable evidence would be needed. He stated that there does not seem to be a reason to limit the decibel level at the exterior of the building.

Mr. Seewald discussed the issue of odor. His statements are summarized as follows:

- The ventilation system has been redesigned since the initial hearing. He noted that the proposed system will vent straight up to increase the velocity of exhaust.
- A sketch plan prepared by Allstate Hood and Duct was submitted to supplement the initial report. The plan proposes a velocity stack which is designed to be narrower at the top to increase velocity. The stack is six (6) feet high which forces the air out at a higher point. This technology is above and beyond the standard requirements for a kitchen ventilation system.
- The accompanying letter from Allstate indicates that based on technical expertise and long experience installing similar systems, the proposed exhaust system will not create a nuisance due to odor.

Mr. Beal asked for more information on the “management of patrons” section of the Management Plan and noted that this is required pursuant to Section 3.352.1 of the Zoning Bylaw for Class II restaurants. Mr. Korpita responded that there will be managers, or other employees, who will be responsible for monitoring those waiting outside. He added that the location will have an interior waiting area designed to hold 20-25 people, with seats for those patrons to sit and wait.

Mr. Beal asked for more information on the distribution component of the use. Mr. Korpita stated that it would be done with a small pick-up truck. Because all the products are bottled by hand, the deliveries will consist mainly of cases of growlers. He stated that there are six (6) growlers in a case and the existing truck can fit 20 – 25 cases at one time and that the scope of the accessory use is outlined in the Management Plan.

The following members of the public spoke regarding the application. All statements are summarized:

- Ann Collette, 7 Charles Lane, stated that the liquor store and laundromat are open until 11:00 p.m. and the tanning salon is open until 9:00 p.m. She expressed continued concern that noise from the outdoor dining area will impact them negatively. She submitted a copy of a letter to the editor from Douglas Raybeck, which stated that noise levels within the restaurant were too loud for patrons.
- Lauren Vieland, 19 Charles Lane, stated that she is still concerned with the potential for people trespassing onto their property during late evening hours, but acknowledged the careful review of the Board. She noted general support for the proposal based on the information and testimony provided and the review process of the Board.

Mr. Korpita responded to the letter to the editor and stated that it is not their policy to increase the music volume to attract a different audience.

Mr. Beal MOVED to close the evidentiary portion of the public hearing. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to close the public hearing.

#### **Public Meeting:**

The remainder of the meeting was utilized to by the Board members to begin discussing draft findings for accessory uses and potential conditions.

Mr. Beal MOVED to continue the public meeting to March 16, 2011 at 7:30 p.m. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to continue the public meeting to March 16, 2011.

**Public Meeting: March 16, 2011** (continued from March 10, 2011)

The Board reviewed draft conditions of the permit based on the discussions at the prior meeting. The Board also discussed and determined findings of fact, in context of the sections of the Bylaw, necessary for granting a Special Permit.

Regarding the principal use, the Board found the following:

- The principal use is a Class II restaurant, under Section 3.352.1 which is allowed under a Special Permit in the B-L Zoning District.
- A Management Plan was submitted which outlines day-to-day operations, the management of patrons gathered outside, employee smoking policies and employee procedures for parking.
- The use is not a “nightclub” or student bar and will be operated as a restaurant based on the Project Summary and Management Plan and testimony provided.
- The live music will be accessory to the restaurant and that it is different from a “nightclub” because there is not a dance floor and only a few tables are moved to allow room for a band. The Board referred to testimony of Mr. Korpita’s involvement the Campus Community Coalition , prohibition of “bar crawls” and strict ID requirements.
- Based on the Parking Analysis for New Market Center, the peak use of the restaurant is different than most of the other businesses on the property. The parking for the restaurant use meets the requirements under Section 7.002 of the Zoning Bylaw.
- Testimony from the applicant and the letter from the Health Department identify that there have been no complaints about odor, or any other aspect of the existing restaurant at its current location.

The Board reviewed the accessory uses. The Board identified that accessory uses may be allowed pursuant to Section 5.00 if the use is “customarily accessory and incidental to a permitted Principal Use”.

Regarding the brewery use, the Board found the following:

- It is a customary use in Hampshire County based on testimony that Northampton Brewery and Opa Opa both brew beer on-site in connection with a restaurant.
- It is incidental to the principal use, a restaurant, based on the Project Summary and Management Plan.
- It will not detrimental to the neighborhood because there have been no complaints from the existing brewery use at the current location. Additionally, based on testimony, the odors produced by the brewery will not be offensive.

Regarding the retail sale of growlers, the Board found the following:

- It is a customary use in Hampshire County in that other restaurants, such as Pasta E Basta and The Black Sheep sell some of their products retail. In this case the product is beer.
- It is incidental to the principal use based on the percentage of total sales of the growlers identified in the Management Plan.
- It will not be detrimental to the neighborhood because the growlers will not be consumed on the premises and there have been no complaints from the existing retail sales at the current location.

Regarding the distribution of beer off-site, the Board found the following:

- It is a customary use in Hampshire County based on testimony which identified that Northampton Brewery and Opa Opa brew beer on-site for distribution for consumption off-site. The Board noted that this is a new accessory use that is not conducted at the existing location.
- It is incidental to the principal use due to the low volume of deliveries relative the rest of the business. Additionally, based on testimony, the brewery capacity will not be large enough to create a large scale distribution operation.
- It will not be detrimental to the neighborhood because the permit will restrict the hours of delivery vehicles. The Board noted that the type of vehicle was not as important as the hours of operation in that the size and scope of the distribution operation will be limited by the brewing capacity.

Regarding the live music, regulated under Section 5.042 of the Zoning Bylaw, the Board found the following:

- As required under Section 5.0420, it is customary and incidental to the restaurant use based on the testimony provided and based on the frequency of the live music, as identified in the Management Plan.
- As required under Section 5.0421, the volume of live music, particularly at the rear of the property, will be within the threshold of 70 dB (A) - above the threshold of hearing - at the property line based on the acoustical data and testimony. Additionally, the pre-recorded music which may be played in the outdoor dining area will be low-level background music.

Regarding the outdoor dining, regulated under Section 5.041 of the Zoning Bylaw, the Board found the following:

- The principal use is a restaurant located in the B-L Zoning District where outdoor dining is allowed with a Special Permit, pursuant to Section 5.041.
- The fence at the edge of the dining area, as well as the tables and chairs, are specifically allowed to remain in place all year round. However, the outdoor dining area shall not be utilized by patrons between November 1 and April 1, pursuant to Section 5.0410.
- The location of the outdoor dining is not within a public way, pursuant to Section 5.0411.
- The Building Commissioner stated that the location of the outdoor dining will not unduly hinder safe exit from or access to the establishment in the event of a fire or other emergency, pursuant to Section 5.0412.
- The fence shall not exceed four (4) feet in height and there are no plans to utilize free-standing heating devices, pursuant to Section 5.0413.

### **Specific Findings:**

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

*10.380 and 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority. The proposal is compatible with existing Uses and other Uses permitted by right in the same District.*

The property is located in the B-L Zoning District and borders the Residential Neighborhood (R-N) Zoning District to the east and B-L District on the north and west. It is bordered by the Office Park Zoning District to the south. The subject property is situated at the corner of, and along, the east side of University Drive and south side of Amity Street. The property contains a two (2) story commercial building, 221 space parking area and a driveway, with 21 parking spaces, walkways and storage areas behind the existing building. A row of stockade fence and evergreen trees exist

along the east property line. Pursuant to the submitted survey, the building is approximately 50 feet from the east property line. The building currently contains a mix of office, retail and service oriented uses, including the following: Greenfield Savings Bank, The Laundry Club, Golden Booty Tanning salon, DePalma Salon, Killian Odonell, M.D., U.S. Marine Corps, South Amherst Family Dentistry, University Liquors, The UPS Store, Eye Care Specialties, and New Market Dentistry. There are also two (2) other Class II restaurants, The Hanger and Rafters, both which are in the immediate vicinity and serve alcohol.

*10.382 and 10.385 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features. The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.*

The use will not be a nuisance due to, and protects against noise because the noise levels were measured and found to be negligible outside the building. Additionally, the permit includes restrictions on employee parking along the east side of the building, employee behavior with respect to exiting the building during evening hours, and patrons awaiting entry inside the designated waiting area. The use will not be a nuisance due to odor based on the proposed ventilation system design, the letter from the Health Department, and other testimony which indicate that there been no complaints from the existing uses - including the brewery - at the existing location. The evidence and testimony identify that the velocity stack ventilation system will mitigate the potential for nuisance odors at the adjacent residential properties. The ventilation stack is not considered a visual offensive structure. No additional lighting fixtures are proposed that will create a nuisance.

*10.383 - The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians.* Conditions of the permit will prohibit employee parking and/or vehicle travel in rear of the building during evening hours to reduce inconveniences to abutters. There are no changes to site plan and based on testimony, the existing traffic flow or patterns onsite function properly for vehicular traffic. The property contains sidewalks and accommodates patrons with various disabilities.

*10.384 - Adequate and appropriate facilities would be provided for the proper operation of the proposed use.* The Fire Department letter indicates that the site access, water supply and building improvements are adequate for the use. The Health Department letter indicates that there have been no complaints regarding the existing locations and identifies that there is no indication that the proposed location will present air quality concerns for neighbors. Testimony from the architect indicates that interior improvements (number of bathrooms, kitchen ventilation system, etc.) will meet or exceed required Building Code requirements. The Management Plan identifies that trash and recycling will be stored and picked up via the existing loading dock. The property is connected to Town water and sewer supply. The Disability Access Advisory Committee memorandum indicates that the location improves accessibility in terms of parking, dining, and restrooms to accommodate patrons with various disabilities.

*10.386 - The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* Under Section 7.20, Shared parking, the peak use for the restaurant will be at a different time from most of the other tenants of the commercial plaza.

Based on specific testimony, the peak needs for restaurant are from 6-10 p.m. and that this peak need is different from other uses on site. The existing parking area contains 221 parking spaces, or 119% where 120% is required for shared parking to occur by-right. The Board found that based on the submitted Parking Analysis for New Market Center, the site is only two (2) spaces below the number required to achieve the required 120%. The proposed use as a restaurant meets the requirements for parking under Section 7.002 of the Zoning Bylaw. The proposed signs, as shown on the submitted "elevations", conform to the maximum size limitations of 10% as required under

Section 8.20. The Board found the existing sign to be acceptable but requires the applicant to submit any additional signs to the Board at a public meeting.

10.388- *The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.* All products and distribution off-site will be made utilizing the existing loading dock.

10.389 - *The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.* The Management Plan identifies that trash and recycling will be stored and picked up via the existing loading dock. Waste oil is stored within the building and is pumped out as needed. Testimony provided that waste created from the brewing process will be removed frequently to prevent build up and/or odors.

10.392- *The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundaries. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings, selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen.* The site contains existing mature landscaping along the east side of the property and that it is adequate to screen the commercial property from the residential properties.

10.393- *The proposal provides protection of adjacent properties by minimizing the intrusion of lighting including parking lot and exterior lighting, through use of cut-off luminaires, light shields, lowered height of light poles, screening, or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.* Only emergency lights exist at the rear of the building. The parking area contains existing and appropriate lighting fixtures. A condition of the permit requires that any new or altered light fixtures shall be downcast to prevent light from spilling onto adjacent property.

10.395 - *The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto.* The only exterior changes to the building will be a fence associated with the outdoor dining area, signs and roof top mechanicals. None of the exterior improvements will create disharmony with the existing buildings or surrounding properties.

10.396- *The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.* The grade of the loading dock is such that trash and recycling storage containers are screened from adjacent residential properties.

10.398- *The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan.* The proposal allows the relocation of a popular, local, and well-established restaurant offering unique products. The site includes easy access to parking and provides for good accessibility for those with disabilities. The proposal supports the economic development goal of the Master Plan to “[s]upport the sustainable growth of existing businesses” by utilizing a commercial space that is currently unoccupied and will bring another well established restaurant to that part of town.



**Public Meeting – Zoning Board Decision**

Mr. Beal moved to approve the application with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2011-00017, to the Amherst Brewing Company, Inc., for the operation of a Class II restaurant, under Section 3.352.1 of the Zoning Bylaw, with accessory retail, distribution and brewery under Section 5.00, accessory outdoor dining under Section 5.041 and live music under Section 5.042, at 6-10 University Drive (Map 13B, Parcel 20, B-L Zoning District) with conditions.

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HILDA GREENBAUM

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ERIC BEAL

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TOM EHRCOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2011.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2011  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
in the Hampshire County Registry of Deeds.